

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Fourth Annual Report on the Operation of the Gangmasters (Licensing) Act 2004

1 April 2008 to 31 March 2009

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Presented to Parliament pursuant to Section 23
of the Gangmasters (Licensing) Act 2004

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Introduction

1. The fourth Report on the operation of the Gangmasters (Licensing) Act 2004 (the Act) is presented to each House of Parliament by the Secretary of State for Environment, Food and Rural Affairs. The report is required by Section 23 of the Act and covers the period 1 April 2008 to 31 March 2009. The Act, which provides for the establishment of the Gangmasters Licensing Authority (GLA), extends to England, Wales, Scotland and Northern Ireland. The Report is laid before the Northern Ireland Assembly in accordance with Section 23 and paragraph 17 of Schedule 2 to the Act.
2. The report describes the main activities that have taken place in the fourth year since the licensing scheme came into operation.

Legislative Background

3. The Act originated from a Private Members Bill introduced into the House of Commons by Jim Sheridan MP on 7 January 2004. The Bill received Royal Assent on 8 July 2004.

4. The Act gives power to the Secretary of State to make secondary legislation establishing the GLA to implement and operate a licensing scheme for gangmasters (hereafter referred to as labour providers) operating in agriculture, related food processing and packaging sectors and the gathering of shellfish. The constitution, structure and other matters relating to the operation of the GLA were established by The Gangmasters (Licensing Authority) Regulations 2005 which came into force on 1 April 2005. The GLA is a Non Departmental Public Body.

5. The Act also gives power to the Secretary of State to make secondary legislation providing for the establishment of an appeals procedure against a decision taken by the GLA. The Gangmasters (Appeals) Regulations 2006 allow labour providers to appeal against decisions taken by the GLA to refuse to issue a licence, to modify or revoke a licence, to impose conditions to which a licence is subject or to refuse to transfer a licence. In addition, the Act gives power to the Secretary of State to exclude certain activities from the scope of the scheme. The Gangmasters Licensing (Exclusions) Regulations 2006 (the “Exclusions Regulations”) set out such exclusions in GB. Similar Regulations were made in Northern Ireland.

6. When the Exclusions Regulations were made, Ministers gave a commitment to review their operation. Accordingly, in July 2008 a consultation exercise was launched on possible amendments to the Exclusions Regulations. The outcome of the consultation will be reflected in the next Report to Parliament.

7. In addition, the Act allows the GLA to make rules establishing the procedure for licensing labour providers and the conditions that apply to the licences, including the fees payable for licences and application inspections. From April 2006, licence applications from labour providers operating in agriculture and the food processing and packaging sectors have been accepted under the Gangmasters (Licensing Conditions) Rules.

Legislation During 2008-09

8. During the year covered by this report, the GLA laid before Parliament the Gangmasters (Licensing Conditions) Rules 2009 setting fee levels for licences and application inspections in 2009-10.

The Board

9. The Board comprises the Chair appointed by the Secretary of State and 19 members nominated by stakeholder organisations and appointed by the Secretary of State. There are also nine *ex officio* members from Government Departments with an interest in the work of the GLA. In addition, the Ethical Trading Initiative may send an observer to attend any meeting of the Board as an observer, who may contribute to the discussion at the invitation of the Chair. A breakdown of the composition of the Board is provided at Appendix 1.

10. In the period covered by this report the Chair received remuneration of £330 per day and other Board members (excluding *ex officio* members) were entitled to claim remuneration of £56.96 per day plus travel and subsistence costs.

11. The Board met on four occasions during the period of this Report and continued to give a clear and strong strategic direction to the GLA. Minutes of the Board meetings are published and may be viewed on the GLA's website (www.gla.gov.uk).

Reappointment of Board Members

12. During the passage of the Gangmasters (Licensing Authority) Regulations 2005, comment was made in both Houses of Parliament about the unusually large size of the Board. In response, Defra Ministers explained that a large Board was necessary to ensure the practical experience of stakeholders could be brought to bear as fully as possible on the implementation of the licensing scheme. However, Ministers, recognising that the requirement for a large Board may change over time, made a commitment to review the structure and composition of the Board three years after the establishment of the GLA. Accordingly, Board members were appointed to serve until the end of March 2008.

13. Defra Ministers have postponed the planned review of the structure of the Board until it has been decided how Government intends to take forward a commitment made in the Hampton Report to merge the GLA with the Health and Safety Executive. This is briefly covered in paragraph 32 of this Report. As a consequence, Defra Ministers have decided to reappoint existing representative members to the Board for a further term ending no later than 31 March 2011, when it is expected that the position on the merger will be clearer.

14. The reappointment of the representative members of the Board commenced at the beginning of 2008 and the process concluded with the reappointment of 10 members in the following November. In addition to this, five new Board members were appointed by Ministers during the period covered by this report.

Human Resources

15. The GLA comprises three Directorates responsible for Policy, Communications and Licensing, Corporate Services and Operations. All the Directorates report to the Chief Executive, who in turn answers to the Board. By 31 March 2009 the Authority had 56 members of staff, including nine Compliance Inspectors and 16 Enforcement Inspectors.

Funding

16. In line with Government policy, the GLA is required to cover the cost of operating a licensing scheme through licence fees and any other sources of income. Funding for the GLA's operational activities is provided by Defra through monthly grant-in-aid payments. Fees received by the GLA from labour providers for application inspections and the issue of licences are paid directly into the Consolidated Fund. Defra makes monthly payments to the GLA to fund the cost of enforcing the licensing scheme on Defra's behalf. The Department of Agriculture and Rural Development (DARD) funds enforcement activities in Northern Ireland.

17. Full details of the GLA's expenditure may be found in the Annual Report and Accounts for 1 April 2008 to 31 March 2009, which were laid before each House of Parliament on 16 July 2009.

Publicity

18. The GLA has published a leaflet setting out the legal rights of workers in a number of languages including English, Bengali, Bulgarian, Gujarati, Hindi, Latvian, Lithuanian, Polish, Portuguese, Punjabi, Romanian, Slovak, Urdu and Welsh. The GLA has proactively worked with labour providers, labour users, trade unions and community groups to distribute the leaflets to as many workers as possible. The format of these leaflets is a model which other government departments have adopted.

19. Guidance for labour providers and labour users on the licensing scheme is available in hard copy and electronically through the GLA website. Between 1 April 2008 and 31 March 2009, the Authority's website (www.gla.gov.uk) received 3,805,920 hits.

20. The GLA has received regular national, local and trade media exposure that has highlighted both the mission of the GLA and the operational successes it has achieved. This publicity has helped to discourage illegal labour providers while providing legal businesses and workers with assurance that the GLA is acting effectively to safeguard their legitimate interests.

21. The GLA has a secure anonymous online reporting system in a variety of languages (www.gla.gov.uk/report) to encourage workers and those within the industry to submit information about exploitation and activity by unlicensed labour providers.

22. The Authority's officials have regularly attended and spoken at conferences, seminars and events relating to workers rights. The target audiences at these events have included labour providers, businesses that use labour providers and organisations that look after the interests of workers.

Licensing

23. Between 1 April 2008 and 31 March 2009, the Authority granted 272 licences and refused 20 applications. At the end of the period there were 1209 licensed labour providers, up from 1185 labour providers at the end of the previous reporting period.

Compliance

24. The GLA uses a risk-based approach to monitoring compliance with the scheme's licence conditions. Licensed labour providers are rated according to the risk they represent, taking into account intelligence received by the GLA. Compliance inspections are then targeted at labour providers with the highest risk rankings.

25. Between 1 April 2008 and 31 March 2009, the GLA conducted 295 application inspections and 257 compliance inspections. The Authority also received 2,828 intelligence reports from the police and other enforcement agencies, labour providers, labour users, trade unions and workers.

26. As a result of the GLA's largely intelligence-led compliance inspections, 39 licences were revoked. Four of these were made with immediate effect.

27. The Authority held negotiations with representatives of all of the major retailers and with trade unions for the purpose of setting up agreements for joint working. Significant progress was made towards a protocol for joint working with all major supermarkets. The protocol was about to be circulated for a first round of informal consultation at the end of the reporting period.

Appeals

28. Defra has set up an Appeals Unit at Crewe to deal with cases where labour providers have appealed against a decision of the GLA. The Unit utilises the services of Appointed Persons from the panel of part-time Employment Tribunal Chairs. In Northern Ireland, the Office of the Industrial Tribunals and the Fair Employment Tribunal deals with appeals by labour providers.

29. At the end of the period covered by this report, the Appeals Unit had received 38 appeals against decisions made by the GLA. This has led to three oral hearings and 19 written determinations. Of these, 16 were dismissed by the Appointed Person. Other appeals have been withdrawn as new licences were issued to the Appellant by the GLA or struck out due to not being pursued by the Appellant. No appeals were received in Northern Ireland during the period.

Enforcement

30. The Secretary of State is responsible for enforcing the criminal offences established by the Act. The Secretary of State has appointed the GLA to enforce the Act on his behalf with funding for this purpose provided by Defra. This arrangement is underpinned by a service level agreement between Defra and the GLA.

31. The two principal offences established by the Act are acting as a gangmaster without a licence (S12) and entering into arrangements with an unlicensed gangmaster (S13). Over the period covered by this report, the GLA initiated 241 investigations into possible criminal offences under the Act and referred four cases for prosecution. Two of the cases referred were brought to Court, both of which resulted in convictions.

Hampton Report

32. In March 2005, the Hampton Report recommended that the GLA should become part of an expanded Health and Safety Executive. The Government has announced its intention to implement the Hampton recommendations in full, although Ministers are considering the costs and benefits of the proposed merger carefully before deciding how to take this recommendation forward.¹

33. All regulators covered by the Hampton report were required to undergo a Hampton Inspection Review to assess their compliance with the Hampton principles, which are embodied within the statutory Compliance Code. Inspections were undertaken by peer review by other regulators. The GLA underwent its inspection in March 2009. The review inspectors were drawn from the Better Regulation Executive, National Audit Office, Animal Health, and Consumer Focus. The report was published later in 2009 and its findings will be commented on in the fifth Annual Report to Parliament.

¹ Although outside the relevant period of this Report, it is important to note that on 3 December 2010, Edward Davey MP, Minister for Employment Relations, Consumer and Postal Affairs, announced the Government's intention to review its workplace compliance and enforcement arrangements. As part of the Review, consideration will be given to the way the GLA operates the licensing scheme set out in the Act and how it enforces the two offences in the Act on behalf of the Secretary of State. The review's Terms of Reference can be found in the House Libraries. The Review will also consider the way the National Minimum Wage and Working Time Regulations are enforced as well as the regulation of employment businesses outside the GLA sectors by the Employment Agencies Standards Inspectorate.

Conclusion

34. During the fourth year of the operation of the 2004 Act, the GLA has switched its focus from identifying and licensing labour providers willing to comply with the requirements of the scheme to tackling those who continue to act illegally by operating without licences. In support of this approach, the GLA has initiated a number of prominent investigations during the year. This has resulted in further favourable publicity, which has undoubtedly raised the profile of the Authority.

35. The year also saw the publication of the second independent report on the performance of the GLA, produced jointly by the Universities of Liverpool and Sheffield. The report concluded that the licensing scheme established by the Act has been an appropriate tool in regulating labour providers in the agricultural sector and that the GLA itself was an effective regulator. While the Authority is justifiably pleased with this endorsement of its approach, it acknowledges that there are still some areas where it could do more, such as forestry, livestock farming, fish processing and shellfish gathering. The GLA planned to turn its attention to these sectors in the 2009/2010 period.

Appendix 1

Membership of the GLA Board 1 April 2008 – 31 March 2009

Representative Organisation	Nominee(s)
Association of Labour Providers	David Camp (reappointed November 2008) Joanne Young (reappointed November 2008)
Recruitment and Employment Confederation	Vacancy from 31/3/2008 Marshall Evans from 2/10/08
National Farmers Union	Sharon Cross (reappointed November 2008) Philip Hudson (reappointed November 2008)
NFU Scotland	Lisa Webb until 24/4/08 Graham Bruce from 2/10/2008
Trades Union Congress	Nick Clark until December 2008, Hannah Reed from 13/12/2008 Bill Snell (stepped down on 31/3/2009)
Transport and General Workers Union	Chris Kaufman (reappointed November 2008) Martin Smith (stepped down on 31/3/2009)
British Retail Consortium	Chris McCann (reappointed November 2008)
Fresh Produce Consortium	Nigel Jenny (reappointed November 2008)
Food and Drink Federation	Vacancy as at 31/3/2009
Sea Fish Industry Authority	Vacancy as at 31/3/2009
Shellfish Association of Great Britain	Colin Macdonald until 4/7/2008 Gillian Mills from 11/2/2009

Association of Chief Police Officers	Vacancy from 31/3/2008 Simon Chesterman from 8/10/2008
Police Superintendents' Association	Russell Hardy (reappointed November 2008)
Local Authority Coordinators of Regulatory Services	Geoffrey Theobald (reappointed November 2008)
Citizens' Advice Bureaux	Jane Mordue (reappointed November 2008)
Ex-officio Appointments	
Secretary of State for Home Affairs	Jeremy Oppenheim
Secretary of State for Work and Pensions	Judith Hicks
Secretary of State for Environment, Food and Rural Affairs	Jeremy Cowper
Department for Business, Enterprise and Regulatory Reform	Carl Cresswell
The Commissioner of Inland Revenue and the Commissioners of Customs and Excise	Robin Wythes
The Director General of the Health and Safety Executive	Samantha Peace
The Scottish Ministers	Neil Fleming
The National Assembly for Wales	Gary Haggaty
The Minister for Agriculture and Rural Development	Dr John Speers



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